

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 214 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

( No. 1 to 5 - No )

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FICOM ORGANICS LIMITED

Versus

LAFFANS PETROCHEMICALS LTD.  
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Appearance:

MR SN SOPARKAR for Petitioner

MR AS VAKIL for Respondent No. 1  
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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 21/09/1999

ORAL JUDGEMENT

The petition is under Section 433 and 434 of the Companies Act, 1956, and the prayer is for the orders of winding up of the Respondent Company on the ground that, despite the statutory notice they have not been paid a sum of Rs.16,27,422-15 together with the interest thereon at the rate of 24 % per annum and therefore; they are

unable to pay their debt within the meaning of the above said provisions of law.

Before proceeding ahead, reference would be required to be made to certain orders pronounced by this Court in past. Under the orders dated October 16, 1998, Ld. Company Judge has come to the conclusion that the Respondent Company was required to pay the petitioner the above said sum and the Respondent Company was directed to do so on/or before November 30, 1998. The directions were that the above said amount should be paid by the demand draft. There were certain orders regarding the adjustment in respect of a sum in the vicinity of Rs.3,50,000-00. It is also said in the said orders that, if the Respondent Company fails to pay the aforesaid sum to the petitioning creditor by November 30, 1998, the matter shall be placed before the Company Judge for passing appropriate orders regarding the admission of the petition and also for the advertisement of the notice of the petition. The matter was made stand over to December 03, 1998.

These orders therefore would go to show that under an elaborate order running into more than 40 pages, the Ld. Company Judge has come to the conclusion that the above said sum was required to be paid to the petitioning creditor by the Respondent Company on/or before November 30, 1998, subject to certain adjustments.

The orders later in time dated December 11, 1998 would go to show that the above said amount with or without the adjustment has not been paid by the Respondent Company to the petitioning creditor. In view of this, the petition came to be admitted under the said orders dated December 11, 1998. The final date for hearing of the petition was fixed as March 01, 1999. Advertisement in English & Gujarati dailies, along with Official Gazette were also ordered. Any how, at the request of Ld. counsel Mr. A.S. Vakil, who appeared for the Respondent Company before the Ld. Company Judge at that time, it was directed that the advertisement shall not be published before 30th January 1999. This obviously was done with a view to furnish one more but the last opportunity for the Respondent Company to clear up the dues.

When this petition reaches for final hearing before me, Ld. counsel Mr. A.S. Vakil has made it clear that he no more represents the cause of the Respondent Company and that, the necessary notice in this respect has been given to the Respondent Company dated

March 10, 1999, which is duly served upon the Respondent Company. Ld. counsel Mr. Vakil has placed on record copy of the notice, postal receipt and the acknowledgment slip. Despite this action on the part of Ld. counsel Mr. Vakil, there has been no appearance on behalf of the Respondent Company.

The orders dated October 16, 1998 is elaborate in every respect, both on questions of law and question of fact, would go to show that a view has been taken that the Respondent Company owes an amount in sum of Rs. 16,27,422-15 to the petitioning creditor. These orders have become final.

The matter does not rest here because when the petition reaches for final hearing before me, there is no appearance on behalf of the Respondent Company, and there has been no opposition. Looking to the fact that the Ld. Company Judge has reached the above said conclusion which has become final, it is obvious that the Respondent Company is unable to pay their debt within the meaning of Section 433 and 434 of the Companies Act, 1956 and therefore the Respondent Company requires to be ordered to be wound up. I, therefore, order accordingly.

Ld. Official Liquidator attached to this Court is appointed as the Official Liquidator for the Respondent Company, with the direction to take into his charge, custody and possession the assets of the Respondent Company and to act as the Official Liquidator, and to discharge the obligations and duties cast upon his office under the statute, namely the Companies Act, 1956.

The Registry is directed to transmit the copy of these orders, both to the Ld. Official Liquidator and the Registrar of Companies, Gujarat, at Ahmedabad.

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/vgn